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OFFICE OF PETITIONS

In re Application of	:	
Damrau et al.	:	
Application No. 10/532522	:	DECISION ON APPLICATION
Filing or 371(c) Date: 06/24/2005	:	FOR PATENT TERM ADJUSTMENT
Attorney Docket Number:	:	
09086-00222-US	:	

This is a decision on the "Petition Under 37 CFR 1.703 to Correct Patent Term Adjustment" filed June 27, 2006. This matter is being properly treated under 37 CFR 1.705(b) as a timely filed application for patent term adjustment.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two-hundred eleven (211) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 23, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 207 days.

On June 27, 2007, applicant timely submitted the instant application for patent term adjustment¹. Applicant requests that the Determination of Patent Term Adjustment be corrected from 207 days, as indicated on the Determination of PTA mailed March 23, 2007, to an adjustment of 211 days. Applicant asserts that the application filing or 371(c) date accorded the application is June 24, 2005, instead of the presently accorded filing or 371(c) date of June 28, 2005. As such, the Patent term adjustment under 37 CFR 1.703(a)(1) should be 211 days.

The circumstances of the mailing of the Notice have been considered. A decision vacating the 903 and filing receipt, and requesting National Stage Processing to issue a corrected 903 and filing receipt, has been mailed under separate cover. In view of the filing or 371(c) correction, the patent term is properly adjusted to 211 days.

¹ PALM records show that the Issue Fee payment was received in the Office on June 27, 2007.

The correct patent term adjustment at the time of the allowance is **two-hundred eleven (211) days**. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the instant letter reflects an adjustment of 211 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 211 days.

35 U.S.C. 154(b)(3) provides for the Office to establish procedures for the application for and determination of patent term adjustment under 35 U.S.C. 154(b). The Office will provide an initial determination of the patent term adjustment in the notice of allowance. If, however, an applicant wishes to request reconsideration of the initial determination in the notice of allowance, the applicant must file an application for patent term adjustment. 35 U.S.C. 41(d) authorizes the Office to establish a fee to recover the estimated average cost of treating applications for patent term adjustment (as well as a fee for treating a request for reinstatement of patent term adjustment), and the cost of treating an application for patent term adjustment is about the same regardless of whether the Office's initial determination of patent term adjustment indicated in the notice of allowance is correct. In any event, refunding the fee under § 1.18(e) when the application for patent term adjustment is correct would: (1) require the Office to raise the fee set forth in § 1.18(e) (to enable the Office to recover the same aggregate amount); and (2) add further complication to a review process that must take place in a limited period of time.

Applicant's deposit account has been charged the petition fee of \$200.00 as authorized in the instant petition.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Derek L. Woods at (571) 272-3232.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

Day : Thursday
Date: 9/13/2007

PALM INTRANET

Time: 23:18:57

PTA Calculations for Application: 10/532522			
Application Filing Date:	06/24/2005	PTO Delay (PTO):	207
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	4
Post-Issue Petitions:	0	Total PTA (days):	207
PTO Delay Adjustment:	4		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
46	09/13/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		207	
45	09/13/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	211		
35	07/31/2007	PATENT ISSUE DATE USED IN PTA CALCULATION			
34	06/27/2007	PETITION ENTERED			
33	07/02/2007	EXPORT TO FINAL DATA CAPTURE			
32	06/29/2007	DISPATCH TO FDC			
31	06/29/2007	APPLICATION IS CONSIDERED READY FOR ISSUE			
29	06/27/2007	ISSUE FEE PAYMENT VERIFIED		4	25
28	06/27/2007	ISSUE FEE PAYMENT RECEIVED			
27	05/14/2007	FINISHED INITIAL DATA CAPTURE			
26	03/28/2007	EXPORT TO INITIAL DATA CAPTURE			
25	03/23/2007	MAIL NOTICE OF ALLOWANCE	207		-1
24	03/23/2007	MAIL OATH OF DECLARATION REQUIRED			
23	03/19/2007	ISSUE REVISION COMPLETED			
22	03/19/2007	OATH OR DECLARATION REQUIRED			
21	03/19/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
20	03/19/2007	CASE DOCKETED TO EXAMINER IN GAU			
19	03/19/2007	NOTICE OF ALLOWABILITY			
17	03/16/2007	CORRESPONDENCE ADDRESS CHANGE			
16	03/09/2007	PRELIMINARY AMENDMENT			
15	09/07/2006	CASE DOCKETED TO EXAMINER IN GAU			
14	05/17/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	01/20/2006	PRELIMINARY AMENDMENT			

8	02/11/2006	CLEARED BY OIPE CSR			
7	02/10/2006	CLEARED BY OIPE CSR			
6	02/10/2006	CLEARED BY OIPE CSR			
5	06/28/2005	371 COMPLETION DATE			
4	01/24/2006	APPLICATION DISPATCHED FROM OIPE			
3	01/24/2006	NOTICE OF DO/EO ACCEPTANCE MAILED			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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